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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 448

AMERICAN FEDERATION OF LABOR; METAL TRADES DEPARTMENT, A. F. OF L.; FLORIDA STATE FEDERATION OF LABOR, ET AL.,

Appellants,

vs.

J. TOM WATSON, AS ATTORNEY GENERAL OF THE STATE OF FLORIDA, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA

BRIEF FOR APPELLANTS

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BRIEF FOR APPELLANTS

Opinion Below

The opinion of the special three-judge District Court for the Southern District of Florida is reported in 60 F. Supp. 1010, and is also found in the Record at pages 206-218.

Jurisdiction

Appellants, in support of the jurisdiction of the Supreme Court of the United States to review the above entitled case on appeal, respectfully show:

The jurisdiction of the Supreme Court of the United States on this appeal is invoked under Sections 238 and

266 of the Judicial Code as amended by the Act of February 13, 1925, c. 299, Section 1 (43 Stat. 938) (United States Code Ann., Title 28, Sections 345 and 380). The final decree of the three-judge District Court was entered June 11, 1945. Application for appeal herein was presented on the 11th day of August, 1945.

Constitutional and Statutory Provisions Involved

The law of the State of Florida, involved in this appeal and the validity of which has been upheld by the three-judge District Court as not being violative of any law of the United States, is an amendment to Section 12 of the Declaration of Rights of the Constitution of the State of Florida, submitted to the people of the State of Florida for ratification by House Joint Resolution No. 13 of the 1943 regular session of the Legislature of the State of Florida, and ratified by the people of the State of Florida on the 7th day of November, 1944. The amendment reads as follows:

> "Section 12. No person shall be subject to be twice put in jeopardy for the same offense, nor compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken without just compensation. *The right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization;* provided, that this clause shall not be construed to deny or abridge the right of employees by and through a labor organization or labor union to bargain collectively with their employer." (Italics supplied.)

Only the italicized portion of the above amendment is involved in these proceedings.

Statement of the Case

On November 7, 1944, the State of Florida duly adopted the foregoing amendment to its Constitution, the admitted purpose of which amendment was to outlaw existing and future agreements relating to union security, that is, union-shop (commonly termed "closed-shop") agreements, maintenance-of-membership agreements, or any other agreement which requires membership in a labor organization as a condition of employment.

Following public and private threats by the Attorney General of the State, warning labor organizations and employers against continuing or entering into union-security agreements under penalty of civil and criminal prosecution (which threats were followed prior to the hearings below by the actual institution of numerous actions seeking to revoke the charters of corporations continuing to observe their existing union-security agreements, and which threats actually resulted in the cancellation by at least one employer, and threats to cancel by other employers, of such agreements, prior to the hearings below), the appellants herein commenced a proceeding in the District Court of the United States for the Southern District of Florida, Tampa Division, under Section 380 of Title 28 U.S.C. (Judicial Code 266 as amended) to enjoin the Attorney General and other law enforcement officials from enforcing the law in question on the grounds that such law was contrary to and deprived of rights under the Constitution and Laws of the United States.

The appellants (plaintiffs below) are the American Federation of Labor, The Florida State Federation of Labor and various national and local labor organizations operating in the State of Florida who are parties to or are desirous of entering into union-security agreements. Other appellants are individual employee members of such organiza-

tions and three Florida employers who are parties to such agreements (R. 4-8). The respondents (defendants below) are the Attorney General and other officials of the State of Florida charged with enforcement of the law in question (R. 27), together with various employer parties to such agreements who were named as nominal defendants (R. 17).

The complaint, filed in Tampa, Florida, on February 9th, 1945, alleged the existence of various union-security agreements voluntarily arrived at in the course of collective bargaining, to which agreements various of the appellants were parties (R. 17-25). The complaint asserted the indispensability of such union-security agreements to the union appellants and their members as a means of achieving job security, equality of bargaining power, protection of working standards and otherwise of furthering the trade union movement, and to the employer appellants as a means of stabilizing and improving labor relations (R. 11-13, 16). The complaint and supplemental pleadings below set forth the acts of the defendants in threatening to terminate said agreements, in preventing the making of such agreements (R. 32-36; R. 83), and the actual bringing of proceedings to terminate such agreements (R. 55-57; R. 81), and also threats of employers who are parties to union-security agreements immediately to cancel, and actual cancellation of, such agreements because of the threats of the Attorney General and his agents (R. 58-60), all of which was alleged to bring about imminent disruption to plaintiffs' organization, disturbance to production, and loss of benefits and protections. It was alleged that the law in question was (1) an impairment of and obstruction to the right of working people to assemble into and function through labor organizations, protected under the First Amendment as a civil right, (2) an arbitrary, unreasonable and discrimina-

tory exercise by the State of its police power, unlawfully depriving appellants of existing and future contract rights protected under Article 1, Section 10 of the United States Constitution and the Fourteenth Amendment thereto, and (3) in conflict with the laws and policies of the United States as expressed in the National Labor Relations Act and the Norris-LaGuardia Act, and thus in violation of Article VI of the United States Constitution (R. 29-31). The complaint prayed for a temporary and permanent injunction (R. 37).

The defendants and the Attorney General entered motions to dismiss. Plaintiffs applied to the District Court for a temporary restraining order (R. 55) which, after notice (R. 66) and hearing, was granted by the District Court (R. 76), which Court caused a three-judge court, consisting of Circuit Judge Waller and District Judges Barker and DeVane, to be assembled (R. 54). After notice of hearing on plaintiffs' application for an interlocutory injunction (R. 78), briefs were submitted, and the case was argued before the three-judge Court on the 24th day of May, 1945, the Court considering the case upon the pleadings under the defendants' motion to dismiss. On June 11, 1945, the Court entered an order dissolving the temporary restraining order and dismissing the complaint (R. 218), and in connection therewith, made the following findings of fact and conclusions of law (R. 205):

"Findings of Fact

1. No facts are put in issue by any answer filed in this cause.

2. All allegations of fact, as distinguished from conclusions of law, contained in the complaint are admitted by the motion of the Attorney General to dismiss, and no factual issues necessary to a decision in this cause are involved.

Conclusions of Law

1. The District Court of the United States has jurisdiction of the controversy under Section 41(1) of Title 28, U. S. C. A.

2. The District Court of the United States has jurisdiction of the controversy under Section 41 (14) of Title 28 and 43 of Title 8, U. S. C. A.

3. A Three-Judge Court has jurisdiction under Section 380 of Title 28, U. S. C. A.

4. The amendment to Article 12 of the Declaration of Rights of the State of Florida is not in violation of any provision of the Federal Constitution.

5. Said amendment to said Constitution is an appropriate exercise of the police power of the State of Florida.

6. It does not appear on the face of the amendment or on the face of the complaint that said amendment collides with any statute of the United States, regulating labor in Interstate Commerce, but without deciding that no situations could arise which would result in conflict between Federal statutes and the said constitutional amendment, we find that such situations are not exhibited herein and that no case is made out for the granting of and injunction against the defendants or either of them, even if it be conceded that a Three-Judge Court has the authority to enjoin corporate or individual defendants who are not officers of the State nor charged with the enforcement or execution of the constitutional amendment in question.

7. Whether or not the allegations of the complaint appropriately allege irreparable injury is not necessary to a decision.

The conclusions of the Court are more fully set forth in the opinion attached hereto."

Thereafter, on August 11, 1945, appellants petitioned for (R. 219) and by order were allowed an appeal (R. 223) to this Court, which appeal was duly taken and resulted in an order by this Court, dated November 13, 1945, noting probable jurisdiction but limiting arguments "to the question of the jurisdiction of the District Court under Section 266 of the Judicial Code as amended (28 U. S. C. 380), and its jurisdiction as a court of equity" (R. 228).

Specification of Errors to Be Urged

Under the limitation imposed by this Court by its said order of November 13, 1945, in respect to the questions to be presented to this Court, no specific error can be assigned to the Court below, that Court having found (R. 205) that it has jurisdiction of the controversy under Section 41(1) of Title 28, U. S. C. A., and under Sections 41(14) of Title 28 and 43 of Title 8, U. S. C. A., and as a three-judge court under Section 380 of Title 28, U. S. C. A., and that Court having further found that it was not necessary to a decision in the case to determine "whether or not the allegation of the Complaint appropriately alleged irreparable injury," or, in other words, whether that Court had jurisdiction as a court of equity.

ARGUMENT

As heretofore noted, the argument herein is limited to the jurisdictional issues, and this brief will not attempt to discuss in any way the merits of the controversy. For a summary of appellants' principal argument in respect to such merits, this Court is respectfully referred to appellants' printed Statement as to Jurisdiction herein (pages 6

through 10). The questions in this case, as limited by order of this Court, are taken to include:

I. Whether the Court below has jurisdiction as a three-judge court under Section 380 of Title 28, U. S. C.;

II. Whether there is any necessity to allege that the matter in controversy exceeded $3,000 in value, and, if so, whether there are sufficient allegations to that effect; and

III. Whether the pleadings set forth sufficient immediate and irreparable injury to warrant exercise of the jurisdiction of the Court below as a court of equity.

Since the case was heard by the Court below on motion to dismiss, and since that Court found specifically that "no facts are put in issue by any answer filed in this case," and "no factual issues necessary to a decision in this case are involved" (R. 205), the allegations contained in the pleadings and supporting affidavits filed by plaintiffs below must be looked to to see if sufficient is alleged to warrant the Court below taking jurisdiction as a special three-judge Court, and to see if sufficient facts are set forth warranting the District Court to take jurisdiction as a court of equity.

I

The District Court has jurisdiction as a special three-judge court under Section 380 of Title 28, U. C. C.

Section 380 of Title 28 of the Judicial Code states as follows:

"No interlocutory injunction suspending or restraining the enforcement, operation or execution of any statute of a State by restraining the action of any officer of such State in the enforcement or execution of such statute * * * shall be issued or granted by

any justice of the Supreme Court, or by any District Court of the United States, or by any judge thereof, or by any Circuit judge acting as District judge, upon the grounds of the unconstitutionality of such statute, unless the application for the same shall be presented to a justice of the Supreme Court of the United States, or to a Circuit or District judge, and shall be heard and determined by three judges, of whom at least one shall be a justice of the Supreme Court or a Circuit judge, and the other two may be either Circuit or District judges, and unless a majority of said three judges shall concur in granting such application."

The complaint herein shows that the Legislature of the State of Florida at its 1943 regular session duly adopted and passed a Joint Resolution proposing and submitting for ratification the amendment involved in this case, and that on November 7, 1944, said amendment was ratified by the people of the State of Florida by a vote of 147,860 for to 122,770 against, and thereupon immediately became effective and operative as a law of the State of Florida and as an amendment to the Constitution of the State of Florida (R. 27-28). The complaint then alleged that the said law was in violation of and deprived of rights granted under (1) the First Amendment as protected against invasion by the State by the Fourteenth Amendment, (2) Article I, Section 10, of the Constitution of the United States, providing that no State shall make laws impairing the obligations of contracts, (3) Article VI of the United States Constitution providing that the laws of the United States shall be the supreme law of the land, and (4) the Fourteenth Amendment protecting as a property right the right freely to contract, and prohibiting denial of the equal protection of the laws (R. 29-31). Finally the complaint alleged that the defendant Attorney General and other law enforcement officials of the State of Florida, under color of said unconstitutional law, were seeking to enforce said unconstitu-

tional law as against said plaintiffs to plaintiffs' irreparable injury (R. 32-36). Plaintiffs sought a temporary and final injunction.

Since appellants are seeking to restrain preliminarily and permanently the enforcement and operation of the Florida constitutional amendment by various law enforcing officials of the State upon the ground of the unconstitutionality of such amendment under the Constitution of the United States, it would appear that the requirements of Section 380 have been fully met (*Sterling* v. *Constantin*, 287 U. S. 378) if a State constitutional amendment can be considered to be included within the term "statute" as used in Section 380.

Appellants have assumed that a constitutional amendment of State-wide application is embraced under the term "statute" as used in Section 380, and have sought temporary and final relief before a three-judge court, in reliance upon the case of *Phillips* v. *United States, et al.*, 312 U. S. 246. That case involved an action brought by the United States of America and others against Phillips, Governor of the State of Oklahoma, to restrain interference by the Governor, acting under general authority of the constitution and various statutes of the State, with the completion of a dam on the Grand River in Oklahoma. An interlocutory injunction was granted and vacated, the Supreme Court finding that the complaint as filed did not impugn the validity of any law of Oklahoma. However, in the course of its discussion relating to the jurisdiction of a three-judge court, this Court laid down the rule which governs such jurisdiction in the following words:

> "To bring this procedural device into play—to dislocate the normal operations of the system of lower federal courts and thereafter to come directly to this Court—requires a suit which seeks to interpose the Constitution against enforcement of a state policy, whether such policy is defined in a state constitution or

> in an ordinary statute or through the delegated legislation of an 'administrative board or commission.' The crux of the business is procedural protection against an improvident state-wide doom by a federal court of a state's legislative policy. This was the aim of Congress and this is the reconciling principle of the cases."

An earlier case decided by the United States Supreme Court is also in point on the question here involved. *In Sterling, Governor of Texas, et al., v. Constantin, et al., supra*, a proceeding was had before a three-judge court, which Court granted an interlocutory injunction against the defendant, Ross S. Sterling, as Governor, and others, who were acting under authority of the State constitution and statutes, restraining them from enforcing certain military or executive orders regulating or restricting the production of oil from complainants' wells. This Court there said:

> "As the validity of provisions of the State Constitution and Statutes, if they could be deemed to authorize the action of the Governor, was challenged, the application for injunction was properly heard by three judges. *Stratton v. St. Louis Southwestern R. Co.*, 282 U. S. 10; 51 S. Ct. 8; 75 L. Ed. 135."

See also *Cox v. McNutt*, 12 Fed. Supp. 355; *Powers Merc. Co. v. Olson*, 7 Fed. Supp. 865.

Counsel for respondents herein place principal reliance for their assertion that a three-judge court as such has no jurisdiction upon the fact that Section 380 uses the word "statute" and makes no reference to "State constitutional amendment". Such an assertion, however, overlooks the fact that it was the obvious object of Congress in enacting Section 380 to prevent undue interference by a Federal District Court with state-wide policy of a soverign State, and that accordingly it would be a clear subversion of Con-

gressional intent to prohibit the issuing of injunctions by a single district judge against enforcement of State-wide legislative policy, while at the same time permitting such injunctions against enforcement of State constitutional policy. This was the reasoning used by the court below in sustaining its jurisdiction as a three judge court (R. 211):

> "We doubt not that the statute ought to have prohibited a single judge from enjoining action under a state constitution, for it seems incongruous that a single judge should be able to enjoin action under a constitutional provision but that he could not do so under a state statute."

Further, the assertion of counsel for respondents forgets the all-inclusive meaning of the word "statute" ascribed to the term when used by Congress relative to Supreme Court appeliate jurisdiction. In *Stevens* v. *Griffith*, 111 U. S. 348, this Court, relying upon *Williams* v. *Bruffy*, 102 U. S. 255, stated as follows:

> "Any enactment to which a State gives the force of law, whether it has gone through the usual stages of legislative proceedings, or been adopted in other modes of expressing the will of the State, is a statute of the State within the meaning of the Acts of Congress touching our appellate jurisdiction."

And it is relevant to observe that constitutional restrictions on improper interference by the "State" with existing contract rights, or other constitutionally protected rights, applies to such interference by State Constitution or by initiative of the people as well as by a law passed by a State Legislature. *Mississippi & M. R. Co.* v. *McClure*, 10 Wall. 511; *Denver* v. *New York Trust Co.*, 187 Fed. 890; *Ex parte Virginia*, 100 U. S. 339.

It is respectfully submitted that the foregoing considerations impel the conclusion that the word "statute" as

used in Section 380 of Title 28 of the Judicial Code includes any rule prescribed by power of the State and expressing the will of the State throughout its borders, regardless of whether that rule is established by act of the State Legislature at a regular or special session, or by the people of the State in a State-wide referendum. Any other construction would nullify the purpose of Section 380 to prevent possible unduly considered abrogation of State policy by the action of a single district judge.

II

It is unnecessary in this case to allege that the matter in controversy exceeds $3,000 in value, but even if it were necessary, there are sufficient allegations to that effect.

A. IT IS UNNECESSARY IN THIS CASE TO ALLEGE THAT THE MATTER IN CONTROVERSY EXCEEDS $3,000 IN VALUE

Paragraph 2 of the complaint alleges specifically that

> "This suit arises under the Constitution and Laws of the United States and is brought to redress and prevent the deprivation, under color of law of the State of Florida, of rights, privileges and immunities secured under the Constitution and Laws of the United States, including Article I, Section 10, Article VI, and the First and Fourteenth Amendments to such Constitution, and Title 29, Sections 151-66 of the U. S. Code, all as hereinafter more fully appears. This Court has jurisdiction under Title 28, Section 41, subsections 1 and 14, U. S. C. A.; also under Title 8, Section 43 of the U. S. Code, and Title 28, Section 380, U. S. C. A., all as hereinafter more fully appears." (R. 3.)

Not only do appellants allege that the present suit was brought under the Civil Rights Act, but the complaint clearly sets forth an infringement of its provisions. As heretofore seen, the substance of the complaint is that the

Attorney General of Florida and other State law enforcement officials, proceeding under color and purported authority of an unconstitutional amendment, seek to deprive plaintiffs of civil and property rights secured to them under the First Amendment, under the Fourteenth Amendment, under Section 10 of Article I and under Article VI, of the United States Constitution.

It has been determined by this Court in *Hague* v. *CIO*, 307 U. S. 496, and in *Douglas* v. *Jeannette*, 63 S. Ct. 877, that "the District Courts of the United States are given jurisdiction by 28 U. S. C., Section 41(14) over suits brought under the Civil Rights Act without the allegation or proof of any jurisdictional amount" where civil or property rights are threatened under color of allegedly unconstitutional State law. The Court below found no trouble in finding that it had jurisdiction under Section 43 of Title 8 and Section 41(14) of Title 28, U. S. C. (R. 219).

B. THE PLEADINGS OF THE COMPLAINT CLEARLY INDICATE THAT THE MATTER IN CONTROVERSY EXCEEDS $3,000 IN VALUE.

The Court below likewise found that, under the pleadings before it, it had jurisdiction under Section 41(1) of Title 28 (R. 209) giving jurisdiction to district courts in cases arising under the Constitution or Laws of the United States where the matter in controversy exceeds $3,000. The allegations as to property damage in excess of $3,000 (also relevant to the question of whether there exists sufficient irreparable injury) are as follows:

> "19. A principal purpose sought to be achieved by the members of labor associations, including members of plaintiff associations and the individual plaintiffs herein, in the exercise of their rights of assembly, speech, press and petition, as hereinbefore alleged, is to secure economic security through the entering into by labor associations of which they are members of such union shop or union security agreements. The secur-

ing of such agreements is a necessary and indispensable concomitant of the assemblage of working people, including the members of plaintiff associations and the individual plaintiffs herein, into labor organizations, and the right of labor associations, including plaintiff associations, to maintain and obtain such agreements, constitutes a necessary and indispensable element of their proper functioning and for the fulfillment of their purposes, as heretofore set forth.

"20. Such union shop or union security agreements and the right to enter into them constitute valuable property and civil rights in plaintiffs, for the following additional reasons: The union shop or union security agreement constitutes the most effective means of obtaining and securing for plaintiff labor organizations, their members, and the individual plaintiffs herein:

(1) Job security and protection from employer discrimination by removal of motives to discharge or demote because of union activity.

(2) Equality of bargaining power, with consequent betterment of working conditions by insuring labor a united front in the contest for a fair share of the joint products of capital and labor.

(3) Protection of working standards by preventing cut-throat wage competition by non-union employees.

(4) Equality of sacrifice by insuring that all who enjoy union wages and working conditions, achieved through years of struggle and deprivation, share in the costs of such benefits as members of the union rather than as 'free riders.'

(5) An increased measure of union responsibility for their obligations under collective bargaining agreements by providing a means of imposing disciplinary action.

(6) Elimination of jurisdictional strife by safeguarding against raids and other disruptive tactics of rival labor organizations, and

(7) Labor-management cooperation by eliminating the suspicion and hostility which often characterizes

the initial stages of employer recognition, thereby freeing union energies and resources for constructive cooperation rather than defensive sparring.

"21. Labor organizations, including plaintiff labor organizations, have for many years in the past and have at the present time large numbers of union shop or union security agreements with various employers in a large number of trades and industries throughout the United States and in the State of Florida. Labor organizations affiliated with plaintiff, Florida State Federation of Labor, and including the plaintiff labor organizations herein, have approximately 500 union shop or union security agreements embracing approximately 100,000 employees of various employers in Florida. Such agreements are with employers engaged in non-agricultural industries, trades and services. Some of these agreements are for one-year periods with automatic renewal clauses for additional year periods. Some of these agreements are for a period of years up to five years, some for the duration of the present war, and others are about to expire in the near future. Such agreements have proved and are proving useful and necessary in the accomplishments of the purposes as enumerated in paragraphs 14 through 19 hereof.[1] In addition, many labor organizations in Florida, affiliated with the plaintiff, American Federation of Labor, or the plaintiff, Florida State Federation of Labor, including many of the plaintiff labor organizations, are seeking and desire to obtain additional union shop or union security agreements with employers in various industries and trades and services throughout the State of Florida." (R. 11-13.)

"27. All of the foregoing activities enumerated in the preceding paragraphs of this complaint, and in particular the obtaining and maintaining of agree-

[1] The phrase "paragraphs 14 through 19 hereof," wherever it appears in the complaint, was amended to read "pagagraphs 14 thru 20 hereof" (R. 40).

ments containing union shop or union security provisions, as carried on by labor organizations and their members and by the plaintiff labor organizations in the present action and individuals represented by such plaintiff labor organizations and individual plaintiffs herein, constitute the only effective means possessed by organized labor to accomplish economic security and otherwise deter the practices of employers which are destructive of public policy and of the interest of wage earners generally and of members of labor organizations and of plaintiff labor organizations herein, and said activities are indispensable concomitants of the right of employees to organize into labor organizations and to bargain collectively with employers and otherwise to advance their mutual interests and welfare,

"28. The plaintiff employers in this case and other employers similarly situated have an interest in the maintaining and obtaining of collective bargaining agreements with labor organizations containing provisions requiring membership in a labor organization as a condition of employment or other provisions relating to union security in that such provisions in collective bargaining agreements with labor organizations have resulted and result in stability of employment relationships, the promotion of harmony and cooperation as between employer and employees, the elimination of strife and discord both within the plant and as between rival labor organizations, the availability of sufficient skilled, competent and experienced artisans of the particular crafts, the stabilization of employees' compensation by the pre-determination of applicable wage rates, the establishment of an effective means of increasing production." (R. 16.)

"39. The contracts hereinabove specifically mentioned, and in particular the union shop provisions thereof, constitute valuable property rights to the plaintiff unions and their members and the individual plaintiffs, as well as to plaintiff, McCloskey & Company, and plaintiff, Tampa Florida Brewery, Inc., such

value being in excess of Three Thousand Dollars exclusive of interest and costs. Under and by virtue of such agreements and the union security provisions thereof, such plaintiffs have realized and are realizing many benefits and advantages, including those enumerated in paragraphs 14 through 19, supra.

"40. The plaintiff, R. J. Gould, doing business as the Gould Welding & Erecting Company, employs approximately 42 employees, all of whom are members in their respective crafts of plaintiffs, United Brotherhood of Carpenters and Joiners of America; Bricklayers, Masons and Plasterers International Union of America, and International Brotherhood of Electrical Workers, and all of which employees have duly designated such organizations as their exclusive representatives for all purposes of collective bargaining. The said plaintiff, R. J. Gould, and the said labor organizations have been since December, 1944, and still are, in the process of negotiating a collective bargaining agreement covering wages, hours and working conditions of the employees employed by said Company. Although such plaintiff and such plaintiff labor organizations are desirous of entering into a union shop agreement, they were and are being prevented from so doing by reason of the said Anti-Labor Amendment, as hereinafter more specifically described." (R. 25.)

The verified motion for temporary restraining order recites the filing of seven quo warranto proceedings by the Attorney General against various corporations having union-security contracts, including four corporations having contracts with various of appellant organizations, which proceedings seek to cancel the corporate charter of such corporations unless the corporations refuse to abide by the union-security provisions of their contracts with the particular labor organizations (R. 55).

Finally, the uncontested affidavit filed by Glenn McClung in support of the application for interlocutory injunction sets forth as follows (R. 80):

> "* * * that if this anti-labor Amendment is made effective it will cause an immediate decline and decrease in the membership of plaintiff organizations and the dues collected from said organizations, which decrease will be far in excess of $3,000.00 and will thereby render the plaintiff organizations financially unable to meet their obligations on the balance of the purchase price, or to continue to defray the expense necessary for the continued maintenance of their properties, thereby jeopardizing their ownership of, as well as their financial ability to continue to defray the necessary maintenance of their properties, which would cause them to sustain a loss greatly in excess of $3,000.00. Deponent further states that if said anti-labor Amendment is made operative by court proceedings, civil or criminal, it will cause such a chaotic condition in the ranks of labor and a loss of faith in the plaintiff union organizations as will result in a decimation of their membership to such extent that the loss of dues now payable to said local plaintiff organizations as well as the national plaintiff organizations, greatly in excess of $3,000.00."

It is submitted that the foregoing allegations showing possible loss to plaintiffs of considerable membership, with consequent loss of revenue, showing impairment of ability to function and to carry out the objectives and purposes of the plaintiff organizations, showing loss of valuable existing and future contract rights, and, indeed, showing a threat to the very existence of the plaintiff organizations if the Amendment in question is made operative or enforced against either party, together with the specific allegation that the matter in controversy exceeds $3,000,[2]

[2] See Form 2 of the Federal Rules of Civil Procedure.

constitute ample allegations as to the amount in controversy. The jurisdictional amount required by the Judicial Code has been held to be present if the future value of the continuing exercise of the right sought to be exercised or the future avoidance of the burden sought to be avoided may be estimated as in excess of $3,000. *Glenwood Light Co.* v. *Mutual Light Co.*, 239 U.S. 121, 126; *Thompson* v. *Thompson*, 226 U.S. 551.

The allegation that the very existence of plaintiff organizations will be threatened is not an idle one. The United States Industrial Commission, set up by the 57th Congress to report on industrial relations, expressly defended the union shop on the ground that the logical result of the non-union shop was destruction of the union.[3] In *Kemp* v. *Division 241*, 255 Ill. 213, 99 N.E. 389, the Supreme Court of Illinois, in denying an injunction against a strike for a closed shop, held that "to deny them the right to determine whether their best interests required that they should be associated in their work only with members of their organization would imperil their very existence."

III

The pleadings indicate sufficient immediate irreparable injury to warrant invoking the jurisdiction of the court below as a court of equity.

The pleadings show as follows:

Following the allegations contained in paragraphs 19, 20, 27 and 28 of the complaint, set forth in connection with Point II above, indicating the purpose, necessity and in-

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[3] The Final Report of the Industrial Commission, H. Docket No. 380, 57th Congress, First Session, Vol. XIX, pp. 815-817.

dispensability of union-shop agreements, the complaint alleges as follows:

"40. The plaintiff, R. J. Gould, doing business as the Gould Welding & Erecting Company, employs approximately 42 employees, all of whom are members in their respective crafts of plaintiffs, United Brotherhood of Carpenters and Joiners of America; Bricklayers, Masons and Plasterers International Union of America, and International Brotherhood of Electrical Workers, and all of which employees have duly designated such organizations as their exclusive representatives for all purposes of collective bargaining. The said plaintiff, R. J. Gould, and the said labor organizations have been since December, 1944, and still are, in the process of negotiating a collective bargaining agreement covering wages, hours and working conditions of the employees employed by said Company. Although such plaintiff and such plaintiff labor organizations are desirous of entering into a union-shop agreement, they were and are being prevented from so doing by reason of the said Anti-Labor Amendment, as hereinafter more specifically described." (R. 25.)

"41. Plaintiff labor organizations are involved in numerous other situations similar to the situation above described with respect to plaintiff, R. J. Gould, in the State of Florida." (R. 26.)

"49. The defendants, J. Tom Watson, as Attorney General of the State of Florida, Millard Caldwell, as Governor of the State of Florida, J. Rex Farrior, as State's Attorney of Hillsborough County, Florida, and Hugh Culbreath, as Sheriff of Hillsborough County, Florida, and each of them, contend that plaintiffs, by observing the provisions of their existing collective bargaining agreements and the provisions of existing constitutions and by-laws relating to union security and requiring membership in a labor organization as a condition of employment, violate said 'Anti-Labor Amendment,' and further contend that said 'Anti-Labor Amendment' prohibits plaintiffs from

entering into or renewing collective bargaining agreements containing any such provisions.

"50. It is the intent and purpose of such defendants to force plaintiffs to comply with said illegal law and to enforce compliance against said plaintiffs by civil and criminal proceedings, and to prevent plaintiffs from realizing the benefits and advantages of their existing contracts and from entering into similar contracts in the future. Such defendants threaten to and will, unless enjoined by this Court, file criminal and civil complaints against and will prosecute the plaintiff labor organizations and the plaintiff employers, their officers and agents, and the individual plaintiffs herein, if they continue to observe the provisions of existing collective bargaining agreements relating to union security or if they attempt to observe the provisions of existing constitutions and by-laws of plaintiff labor organizations referring to union security or if they enter into or renew collective bargaining agreements containing provisions relating to union security or providing that membership in the organization shall be a condition of employment. The acts of such defendants, under color of the alleged law, will work an irreparable injury and damage to labor unions and their members, and to employers, and particularly these plaintiffs, by reason of the loss of present and prospective benefits derived and to be derived from such contracts, as more particularly hereinbefore alleged, and will result in interminable litigation and multiplicity of prosecutions and legal proceedings and will cause widespread disruption to employment relations and a considerable interference with production. Such threatened acts of defendants will further substantially interfere with, impair and destroy operations of the businesses of plaintiff employers and of other employers similarly situated throughout the State, and will cause and result in the disorganization and disintegration of plaintiff labor organizations and others similarly situated.

"51. Specifically, the defendant Attorney General, J. Tom Watson, has threatened to institute immediate proceedings in quo warranto against the defendant, Tampa Shipbuilding Company, the defendant, St. Johns River Shipbuilding Company, the defendant, National Container Corporation, the plaintiff, McCloskey & Company, the plaintiff, Tampa Florida Brewery, Inc., and other employer corporations with whom plaintiff labor organizations now have collective bargaining agreements containing union shop provisions, seeking to annul and cancel the corporate franchise under which said corporations are now functioning by grant or privilege from the State of Florida to do business in Florida unless said corporations immediately desist from observing the provisions of such existing collective bargaining agreements requiring membership in plaintiff labor organizations as a condition of employment. Said defendant, J. Tom Watson, has prepared and will, unless restrained by this Court, immediately file said proceedings in quo warranto against said employers. The refusal or failure of any of such employers to enforce said provisions in said contracts relating to union security in said existing collective bargaining agreements will cause immediate and irreparable injury and damage to plaintiff labor organizations who are parties to such existing agreements, and will cause immediate and irreparable injury and damage to plaintiff, McCloskey & Company, and plaintiff, Tampa Florida Brewery, Inc., as well as other employers similarly situated, in that the benefits and advantages under such agreements will be lost and disruption to production will inevitably result if there is any failure to continue to observe the union security provisions of its existing collective bargaining agreement.

"52. Further, said defendant, J. Tom Watson, has threatened the plaintiff labor organizations, their officers and agents and the individual plaintiffs herein and other labor organizations and officers of labor organizations throughout the State of Florida who are

situated similar to plaintiff organizations with immediate criminal prosecutions under Section 833.01 of the Florida Statutes, 1941, providing for fine and imprisonment for any persons conspiring to violate any law of the State of Florida, unless such plaintiffs and others give up their existing agreements in respect to union security and unless they refrain from entering into or renewing any such agreements, and said J. Tom Watson, as Attorney General, is giving effect to said threats at the present time in the following manner: He has publicly, through the press of Florida, as the head of all law enforcement agencies in this State, issued orders to all prosecuting attorneys, sheriffs, constable and other law enforcement officers in the State to institute immediately prosecutions in court against all persons, including these plaintiffs, who are violating said 'Anti-Labor Amendment' by recognizing or entering into collective bargaining agreements with provisions as hereinabove set out, and said officers are now preparing such criminal proceedings to be instituted against plaintiffs and all other persons similarly situated to plaintiffs who are not abiding by said 'Anti-Labor Amendment,' and the said J. Tom Watson is himself preparing warrants which will be immediately issued and served upon all such persons, including plaintiffs, who are refusing to comply with said 'Anti-Labor Amendment.' Such threats have resulted and will result, unless restrained, in loss of personal, civil and property rights by plaintiffs, including the benefits of assemblage, liberty of contract, and the advantages and benefits of existing and recognized contracts, and in loss of present and prospective members by plaintiff labor organizations, and such threats imperil the security of plaintiff labor organizations and the security of their members.

"53. The said J. Tom Watson, as Attorney General, has also, through the press of Florida, threatened to prosecute all persons, including the plaintiffs to this cause, who execute or renew any collective bargaining agreement containing a provision requiring member-

ship in a union as a condition of employment; by reason of said threats said plaintiff, J. R. Gould, has been prevented from entering into collective bargaining agreements containing union security provisions, although anxious and willing so to do, but unless he is permitted to enter into such contracts he will suffer irreparable damage and injury from loss of benefits and advantages under such contracts by reason of threatened concerted action by his employees for failure to enter into such agreement. Further, in respect to said plaintiff, J. R. Gould, he has suffered and is suffering irreparable injury and damage by reason of his inability to enter into a union shop agreement because of said threats of said defendant, J. Tom Watson, as Attorney General of Florida, due to the fact that he is and has been unable to secure sufficient skilled labor properly to conduct his business, and unless said defendant, J. Tom Watson, as Attorney General of Florida, is restrained from enforcing said invalid law he will continue to suffer irreparable damage and injury. Unless this Honorable Court enjoins and restrains said J. Tom Watson, as Attorney General, and other defendant law enforcement officials, from enforcing said law, the plaintiffs herein will be immediately subjected to criminal prosecutions and injunction suits, and wholesale prosecutions, and injunction suits will be instituted against other persons in the State of Florida similarly situated to plaintiffs. All of such suits are in the course of preparation at this time and will be immediately filed, and there will result a great multiplicity of law suits.

"54. Enforcement of the said 'Anti-Labor Amendment' by the said defendant prosecuting officials will deprive the plaintiff labor organizations of the benefits, advantages and privilegs of mutual association and assembly and of the mutual obligations heretofore assumed by members of such plaintiff organizations in such mutual association and assembly. It would deprive such plaintiff labor organizations and all the members of such plaintiffs of the benefits, rights, privi-

leges and immunities heretofore received and now possessed under contracts made by and with plaintiff labor organizations and by and among the members thereof, and will prevent such plaintiffs and all members of such plaintiffs from engaging in all of the activities hereinbefore set forth and from securing the benefits, objectives and purposes of their mutual association and assembly as hereinabove set forth, and will irreparably injure and eventually destroy the plaintiff Labor organizations. The acts of said defendants as threatened and intended aforesaid will interfere with and prevent and cause a cessation and denial of collective bargaining relations between the plaintiff labor organizations and employers and interfere with and prevent the renewal and continuance of contracts and agreements now in effect between the said plaintiffs and employers and others, including contracts which by their terms provide for automatic renewal. The filing of criminal complaints against or the prosecuting of one or more of plaintiffs, or one or more members or officers of plaintiff unincorporated associations will, during the pendency of such prosecution, work all of the said irreparable injury and damage to all of the plaintiffs and all of the members of the plaintiff unincorporated associations and all of the members of labor unions in the State of Florida." (R. 32-36.)

In addition, in respect to the question of irreparable injury, the motion for restraining order filed with the District Court on March 17, 1945, contains the following sworn allegations, uncontested by any of the defendants:

"Now come plaintiffs in the above cause, by their undersigned attorneys, and respectfully show unto the court that since the filing of the bill of complaint in the above cause, the defendant, J. Tom Watson, as Attorney General of the State of Florida, has filed in the Circuit Court of Bay County, Florida, a quo warranto proceeding against J. A. Jones Construction

Company, a corporation, and has filed in the Circuit Court of Duval County a similar proceeding against the St. Johns River Shipbuilding Company, a corporation, and also filed in the same court a similar proceeding against National Container Corporation, and filed in the same court a similar proceeding against Merrill-Stevens Dry Dock & Repair Company, a corporation, and also filed in the Circuit Court of Dade County, Florida, a similar proceeding against Miami Shipbuilding Company, a corporation, and has also filed in the Circuit Court of Hillsborough County, Florida, a similar proceeding against the Tampa Shipbuilding Company, and also filed in the same court a similar proceeding against A. Santaella & Co., Inc., Salvador Rodriguez, Inc., Corrall-Wodiska Y Ca., J. W. Roberts & Son, Inc.; Cuesta, Rey & Co., Grandiaz, Annis & Co., Inc., Morgan Cigar Company, Inc., and Jose Arange & Co., and has also applied to the Supreme Court of Florida for a writ of quo warranto against the Dade County Roofing Company, wherein he is seeking to have immediately made effective the State Constitutional Amendment here under attack, which said Amendment is, in fact, illegal and void and of no effect, all of which respondents in said State court cases, with the possible exception of St. Johns River Shipbuilding Company, are co-operating with the petitioner therein, J. Tom Watson, as Attorney General as aforesaid, and there will not be any bona fide defense made in said suits, or most of them, but that said proceedings will go practically undefended, and that the suits, or most of them, in fact, have the co-operative assistance of respondents in having the prayers contained in the petitions filed by the Attorney General sustained and granted, to the effect that the Constitutional Amendment here under attack is legal and valid and the closed shop provisions of the contracts invalidated; * * *" (R. 55.)

* * * * * * *

" * * * that the invalidation of said provisions of said contracts in said proceedings brought by the

Attorney General in the State courts will cause chaos and confusion among the employees, not only those embraced in the contracts of said respondents to said cases, but thousands of other employees of other companies which have similar union contracts in the State of Florida, and who are either plaintiffs in this cause or are represented by the plaintiffs; that unless enjoined and restrained by this Honorable Court, the plaintiffs' contract and property rights sought to be preserved in this proceeding will be immediately impaired and destroyed, and as a result, utter confusion created in the ranks of plaintiffs, as well as labor generally in the State of Florida; * * *" (R. 57.)

* * * * * * *

"Plaintiffs further show unto the court that in connection with the State court suit brought by the Attorney General against said National Container Corporation, the said National Container Corporation has already served notice by letter upon plaintiffs in this cause, and other interested unions represented by the plaintiffs as a class, since the institution of this suit, that it is going to disregard the closed shop provision of the existing contract, copy of said letter being attached hereto, marked Exhibit 'A' and made a part hereof * * *" (R. 58.)

Exhibit "A", attached to such motion to dismiss, after referring to the union-shop contract between the defendant National Container Corporation and various of the plaintiff corporations and to the Amendment involved in this case, states as follows:

"By reason of the adoption of this amendment, and its inclusion in the Constitution of Florida, it is our duty to suspend the operation of the clause in your contract above referred to and we accordingly give you notice of the suspension of this clause in your contract.

"You are, of course, aware that quo warranto proceedings have been instituted against us under this amendment, copies of writs and complaints have been

furnished to you, and that other suits have been brought for the purpose of establishing the validity of the above referred to constitutional amendment. This notice of suspension, therefore, will be in force until such time as a Court of Last Resort shall determine the constitutionality of this amendment.

Yours very truly, National Container Corporation, by Samuel Kipnis, President." (R. 60.)

The affidavit filed by Glenn McClung in behalf of plaintiffs in their application for an interlocutory injunction further states as follows:

"* * * that defendant, J. Tom Watson, since the filing of this suit has instituted seven quo warranto proceedings in various state courts of Florida, seeking to make effective said anti-labor Amendment, and at the time of the granting of preliminary restraining order in this cause, the said defendant, J. Tom Watson, as Attorney General of the State of Florida, had prepared and was on the verge of filing a large number of similar proceedings against other employers; deponent files herewith certified copies of said seven suits so instituted by defendant J. Tom Watson in said state courts, and makes the same part of this affidavit; that the said defendant, J. Tom Watson, has been quoted in the press of the State continually since the adoption of said anti-labor Amendment as threatening labor and labor unions, as well as employees and employers with criminal and civil proceedings if they continue to recognize in any way the closed shop provisions in existing contracts, or enter into any extension or renewals, or any new contracts containing said provision, and the said J. Tom Watson was preparing to file not only a vast number of other civil proceedings at the time of the granting of the preliminary restraining order by this court, but was also preparing to make effective his threats published in the press of the state to institute criminal proceedings by instituting a large number of criminal cases against plaintiff unions and the members thereof, as well as

employers who have entered into contracts with plaintiff unions and their members, recognizing the closed shop provision of their contract. Deponent attaches hereto some of the clippings from some of the papers of this state, quoting the said defendant, J. Tom Watson, and makes the same a part of this affidavit, and these clippings are but illustrative of the said threats showing the contemplated action of the said J. Tom Watson not only as threatening to take criminal and civil action against plaintiff unions and their members, as well as employers under contract with them recognizing the closed shop provision, but that the said J. Tom Watson was actually taking steps to put into effect all of said threats at the time of the granting of the preliminary restraining order by this Honorable Court; that the filing of said multiplicity of criminal and civil suits by the said J. Tom Watson against plaintiff unions and the members thereof, and employers under contract with plaintiff unions who continue to recognize the closed shop provisions, will deprive these plaintiffs of their civil and property rights, and cause them to suffer irreparable injury impossible of money admeasurement, and the filing of said multiplicity of suits, criminal and civil, will practically destroy and have the effect of undermining and jeopardizing the very continued existence of plaintiff labor unions, and will cause both the labor unions and the members thereof, as well as the employers to suffer irreparable injury and that the same will be done and accomplished by the said defendant, J. Tom Watson, unless enjoined by this Honorable Court." (R. 81.)

A sample of the newspaper clippings attached is as follows:

"Tallahassee, Jan. 10, (AP)—Attorney General Tom Watson today called on Florida workers and employers to recognize the anti-closed shop Amendment as part of the fundamental law 'until some superior authority has assumed, or issued, a contrary order or directive.'

"He said both employers and employes now have

a constitutional duty to say to any group that the right to work in Florida cannot be "denied or abridged because of membership or non-membership in any union."

"'We must desist, all of us now, in taking courses of least resistance demanded by either employer, bargaining agent, business agent, or group of employees; and must refuse to subject ourselves to liability for the violation for constitutional rights, or punishment for infractions of criminal law.'" (R. 83.)

The foregoing allegations, together with those allegations quoted in connection with Argument II, *supra*, comprise the essential allegations upon the basis of which it must be determined whether the Court below had jurisdiction as a court of equity.

It is fully recognized that, in order to invoke the equitable jurisdiction of a Federal district court, the injury to property or civil rights threatened by State action must appear to be not only irreparable, but to be "both great and immediate"—that equitable relief "will be withheld if sought on slight or inconsequential grounds." *Douglas v. Jeannette*, *supra*; *Watson v. Buck*, 313 U. S. 387. That the threatened injury to appellants, as labor organizations and as members of labor organizations on the one hand, and as employers on the other, is (1) irreparable, (2) great, and (3) immediate, is, it is respectfully submitted, amply indicated by the allegations above set forth.

(1) The injury to appellants is *irreparable* because no judgment for money damages could possibly compensate appellant labor organizations for the loss of protection and security which will be occasioned if they are deprived of the benefit of union-security provisions under existing and future collective bargaining agreements. Indeed, the complaint alleges that the very existence of plaintiff labor organizations is threatened by loss of such provisions under the Amendment. Similarly, no monetary award would be

sufficient to compensate the employer appellants for the loss of stability in their relationships with their employees, the loss of a source for skilled and experienced help, and the loss of a means of achieving harmony and cooperation within their plant which enforcement of the Amendment would entail.

(2) The injury to appellant labor organizations that will result if the Amendment is enforced is *great* because, as shown by the pleadings, loss of existing and future contract provisions for union security means loss of membership, loss of equality of bargaining power, loss of protections against cutthroat wage competition and against employer practices which are contrary to the interests of wage earners—means ultimate destruction of appellant organizations. Mr. Justice Jackson, in the recent case of *Wallace Corporation* v. *National Labor Relations Board*, 68 S. Ct. 238, quite aptly stated that "A closed shop is the ultimate goal of most union endeavor." Surely, loss of the one tried and tested means of obtaining for its members job security, equality of bargaining power and protection of working standards and other benefits set forth in paragraphs 20 and 27 of the complaint is one which is not slight or inconsequential. Not only will existing protections and benefits be nullified, but the right of labor organizations to seek such protections and benefits for their members in future negotiations and after organization has been extended will be permanently denied. The inconvenience, money loss, or even sacrifice of liberty through imprisonment, which might be occasioned individuals by possible criminal proceedings will be as nothing compared to the blow inflicted upon the entire labor movement in the State of Florida were the Amendment to be made operative. It is concerning the loss of protections and benefits obtainable only under union-security agreements that appellant labor organizations complain—an

injury far beyond that incidental to a criminal prosecution, and far beyond that which will be suffered through depletion of finances. Assuredly, no case could be presented to this Court by any labor organization involving threatened injury which is "greater" than that involved in the present case; the ability to achieve union security through the processes of collective bargaining, denied by the Amendment in question, goes to the very existence of labor organizations, to their reason for being, to their ability to function in the interests of their members.

(3) Finally, that loss of the benefits and protections of existing and future union-security agreements is *immediately* threatened by the actions of the Attorney General is demonstrated as follows:

1. The pleadings above set forth show that the Attorney General has made actual threats to begin great numbers of criminal prosecutions and civil suits for enforcement against employers and labor organizations continuing to observe or to enter into union-security agreements, and to commence such prosecutions in the immediate future. The pleadings further show that the manner in which such threats were made was calculated to reach all persons who read the newspapers or listen to the radio. Such threats thus gave unequivocal public notice to all employers and to all labor organizations in the State that they will expose themselves to civil prosecutions and suits for damages if they continue to observe union-security agreements or enter into such agreements in the future. The nature of these threats was such as to give reasonable certainty not only that the Attorney General intended to carry them out, but that numerous employers with whom appellant labor organizations have existing union-security agreements on the one hand would thereby be coerced into refusing to observe such agreements, and on the other that other employers about to

enter into or renew such agreements would, because of such threats, refuse to do so, all to appellant labor organizations' great injury and with consequences, *inter alia*, such as those set forth above in paragraph 51 of the complaint.

In *Watson* v. *Buck, supra*, it was held in respect to the sufficiency of threats of prosecution by law enforcement officers that:

> "A general statement that an officer stands ready to perform his duty falls far short of such a threat as would warrant the intervention of equity."

This Court indicated, however, in language applicable to the present case, as follows:

> "For such a general statement is not the equivalent of a threat that prosecutions are to be begun so immediately, in such numbers, and in such manner as to indicate the virtual certainty of that extraordinary injury which alone justifies equitable suspension of proceedings in criminal courts. The imminence and immediacy of proposed enforcement, the nature of the threats actually made and the exceptional and irreparable injury which complainants would sustain if those threats were carried out are among the vital allegations which must be shown to exist before restraint of criminal proceedings is justified."

2. The pleadings above set forth show further that the Attorney General has made good his threats of enforcement by the actual bringing of seven proceedings in *quo warranto* against seven employers (including four with whom various of appellant labor organizations have union-security agreements), seeking to withdraw the right of such employers to do business in the State if such employers continued to observe existing union-security agreements. Such action not only indicates conclusively that the threats of the Attorney General were not lightly made, but affords great and compelling stimulus to employers throughout the State

to abrogate their union-security agreements with appellant labor organizations forthwith. Indeed, the immediate effect of the bringing of such suits on at least one employer with whom several of appellant labor organizations have a union-security agreement was to bring about the very result which appellants seek to avoid through these proceedings. Defendant National Container Corporation, immediately after being served with notice of the bringing of the *quo warranto* action against it, served notice of the cancellation of its existing contract. Are appellants to be obliged to await further cancellations before asking the aid of a court of equity to protect their numerous agreements? In view of the repeated public threats of the Attorney General to bring criminal or civil prosecutions against each alleged violator, and in view of the fact that the Attorney General had actually brought a number of such proceedings, it can hardly be said that appellants are afforded an adequate remedy by intervening in each of these proceedings and all others that might, as threatened, be instituted in the immediate future, or by defending each of innumerable possible criminal prosecutions against themselves as such prosecutions arise. Even though adequate legal counsel were available in sufficient numbers, and even though appellants had sufficient funds to finance such interventions and such defenses, what is appellants' remedy against the imminent and wholesale repetition by other employers of the action taken by defendant National Container Corporation?

The pleadings disclose another situation which, with equal urgency, calls for equitable relief. The appellant, J. Gould Welding & Wrecking Co., and various appellant labor organizations are presently constrained from entering into a collective bargaining agreement providing for union security by reason of the threats of the Attorney General, although both such parties are desirous of entering into such an agreement (R. 25). Numerous similar situations exist

in the State at the present time, and have been in existence from the time of the Attorney General's threats to enforce the Amendment (R. 26). As set forth in the complaint, such situations continue to result in damage to both employer and labor organizations—the employer through an inability to secure sufficient skilled labor properly to conduct his business, the labor organization through the loss of the protection and benefits that would otherwise accrue to it. No injury could be more continuous, and no damage more immediate than exists in the situation where the employer is obliged to refuse to enter into or to renew union-security agreements solely because of the existence of the Amendment and the threats of the Attorney General to enforce it. In such cases, since no court can compel agreement to any term of a contract, the only possible remedy through court action is the obtaining of an injunction restraining enforcement of the Amendment in question. In the absence of any such restraint, appellants are losing and will continue to lose the protections and benefits of innumerable agreements that might otherwise be theirs.

There is a final ground for invocation of the powers of the District Court as a court of equity, and that is the prevention of a multiplicity of civil suits at law. The applicable principle is set forth in *Douglas* v. *Jeannette*, *supra:*

> "In general the jurisdiction of equity to avoid multiplicity of civil suits at law is restricted to those cases where there would otherwise be some necessity for the maintenance of numerous suits between the same parties involving the same issues of law or fact. It does not ordinarily extend to cases where there are numerous parties and the issues between them and the adverse party—here the state—are not necessarily identical."

Examination of the seven *quo warranto* proceedings made a part of the pleadings before the District Court (R. 61, 97, 102, 107, 114, 120 and 173) indicates that the issues in

those proceedings as between the labor organizations (who, as the pleadings show, would be obliged to intervene to protect their rights) and the State would be identical, as they would be in the remaining approximately five hundred cases, involving the appellant labor organizations herein and the State, that would have to brought in order to reach all of the appellants' agreements presently in existence (R. 13).

It is respectfully submitted that appellant labor organizations, as well as appellant employers, threatened as they are with numerous criminal prosecutions and numerous civil suits for damages, faced, in so far as appellant labor organizations are concerned, with the immediate possibility of wholesale cancellations of existing union-security agreements, and presently prevented both from renewing expired agreements and from entering into new agreements, all with immediately disastrous consequences, have no alternative but to appeal to a court of equity for relief. Since the law in question is alleged to deprive of rights guaranteed under the United States Constitution, and since it is the action of the state law enforcement officials which appellants seek to enjoin, appellants have turned to the Federal Courts under Section 380 of Title 28 of the United States Code.

Before concluding this brief, an additional point may require brief discussion. A query was raised by the Court below (but not by the Attorney General or other defendants) as to whether the Amendment in question was operative in the absence of enforcement or enabling legislation (R. 218). This raises the question of whether appellants are in any way damaged.

The general rule is that a constitutional provision is self-executing if it supplies a sufficient rule by means of which the right which it grants may be enjoyed and pro-

tected, or the duty which it imposes may be enforced, without the aid of legislative enactment. *Davis* v. *Burke*, 179 U. S. 399; *Whitman* v. *National Bank*, 176 U. S. 559. See also *City of Tampa* v. *Tampa Water Works Co.* (Fla.), 34 Sou. 631; *Lummus* v. *Miami Beach Congregational Church* (Fla.), 195 Sou. 607. The omission of any express provision for enforcing a right or liability is not necessarily an indication that it was not intended to be self-executing. Under the maxim "ubi jus ibi remedium", the common law will furnish an appropriate remedy. *Whitman* v. *National Bank, supra; Gaiser* v. *Buck*, 203 Ind. 9, 179 N. E. 1, 82 A. L. R. 1348; *State* v. *Warner*, 165 Mo. 399, 65 S. W. 584. The presumption is that all provisions of a State constitution are self-executing. *Winchester* v. *Howard*, 136 Cal. 432, 64 Pac. 692, 69 Pac. 77, 11 Amer. Juris. 689. In particular, prohibitory provisions in a constitution are self-executing to the extent that anything done in violation of them is void. *Norton* v. *Taxing District*, 129 U. S. 479; *Beard* v. *Hopkinsville*, 95 Ky. 239, 24 S. W. 872, 23 L. R. A. 402.

The constitutional Amendment involved in this case very specifically provides that "the right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union." The Amendment is clearly prohibitive. If valid, surely no enabling legislation is necessary to prevent private individuals from agreeing among themselves that membership in the union shall be a condition of employment any more than enabling legislation would be necessary to prevent the State from taking private property without just compensation, prohibited in another portion of this same Amendment. Whether any particular sections of existing state criminal statutes are available to the Attorney General for enforc-

ing the Amendment criminally is immaterial if in fact the Amendment is self-executing as contended by both appellants and respondents herein.

Conclusion

It is respectfully submitted that the Court below has jurisdiction under Section 380 of Title 28 of the Judicial Code, as amended, and has jurisdiction as a court of equity, and it is respectfully requested that this Court proceed to a determination of the validity under the United States Constitution of the Florida Amendment abrogating union-security agreements.

Respectfully submitted,

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